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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: VOLKSWAGEN “CLEAN
DIESEL” MARKETING, SALES
PRACTICES, AND PRODUCTS LIABILITY
LITIGATION

MDL No. 2672 CRB (JSC)

**STIPULATION AND PROPOSED ORDER
ON AMENDED COMPLAINT**

Judge: Hon. Charles R. Breyer

This Document Relates To:

U.S. S.E.C. v. Volkswagen AG,
No. 3:19-cv-1391-CRB

Plaintiff Securities and Exchange Commission (“SEC”); Defendants Volkswagen AG, Volkswagen Group of American Finance, LLC, and VW Credit, Inc. (“VW”); and Defendant Martin Winterkorn (collectively, the “Parties”), through their undersigned counsel, hereby agree and stipulate as follows:

WHEREAS, the SEC filed its Complaint in this matter on March 14, 2019;

1 WHEREAS, VW and Winterkorn filed motions to dismiss certain claims in the Complaint on
2 April 10, 2020;

3 WHEREAS, the SEC notified the Court, as well as VW and Winterkorn, by letter dated August
4 19, 2020, of an error in the Complaint and that it intended to seek permission to file an Amended
5 Complaint within 14 days after the Court ruled on the motions to dismiss;

6 WHEREAS, the Court entered an Order on August 20, 2020, denying Winterkorn's motion to
7 dismiss and granting in part VW's motion to dismiss;

8 WHEREAS, in accordance with Section II.2 of the Court's General Standing Order for Civil
9 and Criminal Cases, attached hereto as Exhibits 1 and 2, respectively, are a clean copy of the proposed
10 Amended Complaint and a redlined copy of the proposed Amended Complaint comparing it to the
11 Complaint; and

12 WHEREAS, the SEC's proposed Amended Complaint does not reallege the dismissed claims
13 or the allegations related solely to those claims (collectively, "Dismissed Claims"), based on the
14 Parties' understanding and agreement that the Dismissed Claims need not be realleged in order to
15 preserve them for appeal, in accordance with *Lee v. Maricopa County*, 693 F.3d 896, 928 (9th Cir.
16 2012) (*en banc*) ("For claims dismissed with prejudice and without leave to amend, we will not require
17 that they be repled in a subsequent amended complaint to preserve them for appeal."); *see also*
18 *Bronson v. Johnson and Johnson, Inc.*, No. C 12-04184 CRB, 2013 WL 5731817, at *3 (N.D. Cal.
19 Oct. 22, 2013) (dismissing claims realleged in amended complaint that were previously dismissed with
20 prejudice because "litigants are not required to reallege dismissed claims in a subsequent amended
21 complaint in order to preserve the right to appeal dismissal.").

22 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the Parties, as
23 follows:

24 The SEC may file its proposed Amended Complaint, without realleging the Dismissed Claims.

25 The SEC has not waived and has preserved its right to later appeal the Court's dismissal of the
26 Dismissed Claims.

VW and Winterkorn shall have 42 days from the date this Stipulation and Proposed Order is entered by the Court in which to answer the Amended Complaint;

Nothing herein shall affect or delay the progress of discovery, including the exchange of Rule 26(a)(1) Initial Disclosures.

This Stipulation may be executed in counterparts, and electronic or facsimile signatures shall be deemed equivalent to original signatures.

IT IS SO STIPULATED.

Dated: September 3, 2020

Respectfully submitted,

/s/Daniel J. Hayes

Daniel J. Hayes

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10 *Attorneys for Defendant Martin Winterkorn*

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14 PURSUANT TO STIPULATION, IT IS SO ORDERED

15
16 DATED: _____, 2020

17 _____
18 CHARLES R. BREYER
19 United States District Judge
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ATTESTATION (CIVIL LOCAL RULE 5-1(i)(3))

In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from the signatories.

Dated: September 3, 2020

/s/Daniel J. Hayes
Daniel J. Hayes